

1 EDMUND G. BROWN JR., Attorney General
of the State of California
2 LINDA K. SCHNEIDER,
Supervising Deputy Attorney General
3 SHERRY L. LEDAKIS
Deputy Attorney General, State Bar No. 676131
4 110 West "A" Street, Suite 1100
San Diego, CA 92101

5 P.O. Box 85266
6 San Diego, CA 92186-5266
Telephone: (619) 645-2078
7 Facsimile: (619) 645-2061

8 Attorneys for Complainant

9
10 **BEFORE THE**
11 **BOARD OF REGISTERED NURSING**
12 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

13 In the Matter of the Accusation Against:

Case No. **2009-265**

14 AMY NICHOLS,
a.k.a. AMY H. BANUELOS,
15 a.k.a. AMY HERMINIA BANUELOS,
a.k.a. HERMINIA BANUELOS ACOSTA,
16 a.k.a. HERMINIA BANUELOS
1332 S. Broadmoor Avenue
17 West Covina, CA 92790

ACCUSATION

18 Registered Nurse License No. 442878
Public Health Nurse Certificate No. PHN 52663
19 Nurse Practitioner Certificate No. NP 8546
Nurse Practitioner Furnishing Certificate No. NPF 8546

20 Respondent.
21

22 Complainant alleges:

23 **PARTIES**

24 1. Ruth Ann Terry, M.P.H., R.N. ("Complainant") brings this Accusation
25 solely in her official capacity as the Executive Officer of the Board of Registered Nursing
26 ("Board"), Department of Consumer Affairs.

27 ///

28 ///

1 **Registered Nurse License No. 442878**

2 2. On or about August 31, 1989, the Board issued Registered Nurse License
3 Number 442878 to Amy Nichols, also known as Amy H. Banuelos, Amy Herminia Banuelos,
4 Herminia Banuelos Acosta, and Herminia Banuelos ("Respondent"). Respondent's registered
5 nurse license was in full force and effect at all times relevant to the charges brought herein and
6 will expire on March 31, 2011, unless renewed.

7 **Public Health Nurse Certificate No. PHN 52663**

8 3. On or about October 20, 1994, the Board issued Public Health Nurse
9 Certificate Number PHN 52663 to Respondent. Respondent's public health nurse certificate was
10 in full force and effect at all times relevant to the charges brought herein and will expire on
11 March 31, 2011, unless renewed.

12 **Nurse Practitioner Certificate No. NP 8546**

13 4. On or about August 12, 1996, the Board issued Nurse Practitioner
14 Certificate Number NP 8546 to Respondent. Respondent's nurse practitioner certificate was in
15 full force and effect at all times relevant to the charges brought herein and will expire on March
16 31, 2011, unless renewed.

17 **Nurse Practitioner Furnishing Certificate No. NPF 8546**

18 5. On or about June 2, 1997, the Board issued Nurse Practitioner Furnishing
19 Certificate Number NPF 8546 to Respondent. Respondent's nurse practitioner furnishing
20 certificate was in full force and effect at all times relevant to the charges brought herein and will
21 expire on March 31, 2011, unless renewed.

22 **JURISDICTION**

23 6. Business and Professions Code ("Code") section 2750 provides, in
24 pertinent part, that the Board may discipline any licensee, including a licensee holding a
25 temporary or an inactive license, for any reason provided in Article 3 (commencing with section
26 2750) of the Nursing Practice Act. .

27 7. Code section 2764 provides, in pertinent part, that the expiration of a
28 license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding

1 against the licensee or to render a decision imposing discipline on the license. Under Code
2 section 2811, subdivision (b), the Board may renew an expired license at any time within eight
3 years after the expiration.

4 STATUTORY PROVISIONS

5 8. Code section 2761 states, in pertinent part:

6 The board may take disciplinary action against a certified or licensed nurse
7 or deny an application for a certificate or license for any of the following:

8 (a) Unprofessional conduct . . .

9 9. Code section 2762 states, in pertinent part:

10 In addition to other acts constituting unprofessional conduct within
11 the meaning of this chapter [the Nursing Practice Act], it is unprofessional
conduct for a person licensed under this chapter to do any of the following:

12 (a) Obtain or possess in violation of law, or prescribe, or except
13 as directed by a licensed physician and surgeon, dentist, or podiatrist
administer to himself or herself, or furnish or administer to another, any
14 controlled substance as defined in Division 10 (commencing with Section
11000) of the Health and Safety Code or any dangerous drug or dangerous
15 device as defined in Section 4022.

16 (b) Use any controlled substance as defined in Division 10
(commencing with Section 11000) of the Health and Safety Code, or any
17 dangerous drug or dangerous device as defined in Section 4022, or alcoholic
beverages, to an extent or in a manner dangerous or injurious to himself or
18 herself, any other person, or the public or to the extent that such use impairs
his or her ability to conduct with safety to the public the practice authorized
19 by his or her license . . .

20 10. Code section 4060 states:

21 No person shall possess any controlled substance, except that furnished to
22 a person upon the prescription of a physician, dentist, podiatrist, optometrist,
veterinarian, or naturopathic doctor pursuant to Section 3640.7, or furnished
23 pursuant to a drug order issued by a certified nurse-midwife pursuant to Section
2746.51, a nurse practitioner pursuant to Section 2836.1, a physician assistant
24 pursuant to Section 3502.1, a naturopathic doctor pursuant to Section 3640.5, or
a pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause
(iv) of subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052.
25 This section shall not apply to the possession of any controlled substance by a
manufacturer, wholesaler, pharmacy, pharmacist, physician, podiatrist, dentist,
26 optometrist, veterinarian, naturopathic doctor, certified nurse-midwife, nurse
practitioner, or physician assistant, when in stock in containers correctly
27 labeled with the name and address of the supplier or producer.

1 Nothing in this section authorizes a certified nurse-midwife, a nurse
2 practitioner, a physician assistant, or a naturopathic doctor, to order his or
her own stock of dangerous drugs and devices.

3 11. Code section 4324, subdivision (a), states:

4 Every person who signs the name of another, or of a fictitious person, or
5 falsely makes, alters, forges, utters, publishes, passes, or attempts to pass, as
6 genuine, any prescription for any drugs is guilty of forgery and upon conviction
thereof shall be punished by imprisonment in the state prison, or by imprisonment
in the county jail for not more than one year.

7 12. Health and Safety Code section 11170 states that no person shall prescribe,
8 administer, or furnish a controlled substance for himself.

9 13. Health and Safety Code section 11173, subdivision (a), states, in pertinent
10 part:

11 No person shall obtain or attempt to obtain controlled substances, or
12 procure or attempt to procure the administration of or prescription for controlled
substances, (1) by fraud, deceit, misrepresentation, or subterfuge . . .

13 COST RECOVERY

14 14. Code section 125.3 provides, in pertinent part, that the Board may request
15 the administrative law judge to direct a licentiate found to have committed a violation or
16 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation
17 and enforcement of the case.

18 CONTROLLED SUBSTANCES AT ISSUE

19 15. "Xanax," a brand of alprazolam, is a Schedule IV controlled substance as
20 designated by Health and Safety Code section 11057, subdivision (d)(1).

21 16. "Vicodin," a compound consisting of 5 mg hydrocodone bitartrate, also
22 known as dihydrocodeinone, and 500 mg acetaminophen, is a Schedule III controlled substance
23 as designated by Health and Safety Code section 11056, subdivision (e)(4).

24 17. "Ativan," a brand of lorazepam, is a Schedule IV controlled substance as
25 designated by Health and Safety Code section 11057, subdivision (d)(16).

26 18. "Didrex," a brand of benzphetamine, is a Schedule III controlled substance
27 as designated by Health and Safety Code section 11056, subdivision (b)(2).

28 ///

1 19. “Ambien,” a brand of zolpidem tartrate, is a Schedule IV controlled
2 substance as designated by Health and Safety Code section 11057, subdivision (d)(32).

3 20. “Oxycontin” is a trade name for controlled release oxycodone. Oxycodone
4 is a Schedule II controlled substance as designated by Health and Safety Code section 11055,
5 subdivision (b)(1)(N).

6 21. “Norco,” a combination drug containing hydrocodone bitartrate 10 mg and
7 acetaminophen 325 mg, is a Schedule III controlled substance as designated by Health & Safety
8 Code section 11056, subdivision (e)(4).

9 **FIRST CAUSE FOR DISCIPLINE**

10 **(Diversion, Possession, Prescription, and**
11 **Self-Administration of Controlled Substances)**

12 22. Respondent is subject to disciplinary action pursuant to Code section
13 2761, subdivision (a), on the grounds of unprofessional conduct, as defined by Code section
14 2762, subdivision (a), in that in and between December 2005, and March 2008, while employed
15 as a pediatric nurse practitioner in the Department of Pediatrics Managed Care Clinic at Harbor-
16 UCLA Medical Center, Torrance, California (hereinafter “medical center”), and/or licensed as a
17 registered nurse, Respondent did the following:

18 **Diversion of Controlled Substances:**

19 a. Respondent obtained the controlled substances Xanax, Vicodin, Ativan,
20 Didrex, Ambien, Oxycontin, and Norco by fraud, deceit, misrepresentation, or subterfuge, in
21 violation of Health and Safety Code section 11173, subdivision (a), as follows:

22 1. On or about June 1, 2007, Respondent wrote prescriptions for 100 tablets
23 each of Xanax and Vicodin for alleged patient M. C. under the name and DEA (Drug
24 Enforcement Agency) number of her supervisor, Dr. J. N., without Dr. J. N.’s
25 knowledge or authorization.^{1/} Respondent issued the prescriptions using M. C.’s name to
26

27 1. Pursuant to the medical center’s standardized procedures, Respondent was permitted to write
28 prescriptions as needed; however, Respondent was only authorized to furnish medications that were
listed on the medical center’s formulary. If the medication was off protocol (Xanax, Vicodin, Ativan,

1 obtain the medications for herself (M. C. was not one of Dr. J. N.'s patients, but was
2 Respondent's ex-boyfriend), and had the prescriptions filled at Walgreens Pharmacy
3 located in Indio, California.

4 2. On or about September 22, 2007, Respondent wrote prescriptions for 100
5 tablets of Xanax and 30 tablets of Ativan for alleged patient M. C. without Dr. J. N.'s
6 knowledge or authorization. Respondent issued the prescriptions using M. C.'s name to
7 obtain the medications for herself and had the prescriptions filled at Walgreens Pharmacy
8 located in Tustin, California.

9 3. On or about December 9, 2005, Respondent wrote a prescription for 100
10 tablets of Didrex for alleged patient M. C. under the name and DEA number of Dr. J. N.,
11 without Dr. J. N.'s knowledge or authorization. Respondent issued the prescription using
12 M. C.'s name to obtain the medication for herself and had the prescription filled at Rite
13 Aid Pharmacy located in Irvine, California.

14 4. On or about August 17, 2006, Respondent telephoned in a refill
15 prescription for 100 tablets of Didrex for alleged patient M. C. to Rite Aid Pharmacy
16 located in Irvine, California, without Dr. J. N.'s knowledge or authorization. Respondent
17 had the prescription filled at the pharmacy for her own personal use.

18 5. On or about March 8, 2007, Respondent wrote prescriptions for 100
19 tablets each of Ambien and Ativan for alleged patient M. C. under the name and DEA
20 number of Dr. J. N., without Dr. J. N.'s knowledge or authorization. Respondent issued
21 the prescriptions using M. C.'s name to obtain the medications for herself and had the
22 prescriptions filled at Rite Aid Pharmacy located in Irvine, California.

23 6. On or about April 10, 2007, Respondent telephoned in a prescription for
24 100 tablets of Didrex for alleged patient M. C. to Rite Aid Pharmacy located in Irvine,
25 California, without Dr. J. N.'s knowledge or authorization. Respondent had the
26 prescription filled at the pharmacy for her own personal use.

27
28

Didrex, Ambien, Oxycontin, and Norco were not listed as approved medications on the formulary), the
treating or supervising physician would write and sign the prescription.

1 7. On or about August 6, 2007, Respondent telephoned in two refill
2 prescriptions for a total of 200 tablets of Didrex for alleged patient M. C. to Rite Aid
3 Pharmacy located in Irvine, California, without Dr. J. N.'s knowledge or authorization.
4 Respondent later had the prescription filled at the pharmacy for her own personal use.

5 8. On or about November 10, 2006, Respondent wrote a prescription for 100
6 tablets of Vicodin for alleged patient E. E. under the name and DEA number of Dr. J. N.,
7 without Dr. J. N.'s knowledge or authorization. Respondent issued the prescription using
8 E. E.'s name to obtain the medication for herself (E. E. was not one of Dr. J. N.'s
9 patients, but is Respondent's son), and had the prescription filled at Rite Aid Pharmacy
10 located in Irvine, California.

11 9. On or about September 22, 2007, after she was terminated from her
12 employment at the medical center, Respondent wrote a prescription for 100 tablets of
13 Oxycontin for alleged patient E. E. Respondent forged Dr. P. F.'s signature on the
14 prescription as the authorizing physician (Dr. P. F. was employed at the medical center
15 and was one of Respondent's former supervisors), and issued the prescription using
16 E. E.'s name to obtain the medication for herself (E. E. was not one of Dr. P. F.'s
17 patients). Respondent had the prescription filled at Rite Aid Pharmacy located in Irvine,
18 California, and obtained 6 tablets of Oxycontin.

19 10. On or about May 28, 2007, Respondent wrote prescriptions for 100 tablets
20 each of Vicodin and Xanax for alleged patient E. E. under the name and DEA number of
21 Dr. J. N., without Dr. J. N.'s knowledge or authorization. Respondent issued the
22 prescription using E. E.'s name to obtain the medication for herself, and had the
23 prescription filled at Walgreens Pharmacy located in La Quinta, California.

24 11. On or about May 30, 2007, Respondent telephoned in a prescription for
25 100 tablets of Norco for alleged patient E. E. to Walgreens Pharmacy located in La
26 Quinta, California, without Dr. J. N.'s knowledge or authorization. Respondent later had
27 the prescription filled at the pharmacy for her own personal use.

1 12. On or about July 17, 2007, Respondent telephoned in a prescription for
2 60 tablets of Xanax for alleged patient E. E. to Walgreens Pharmacy located in La Quinta,
3 California, without Dr. J. N.'s knowledge or authorization. Respondent later had the
4 prescription filled at the pharmacy for her own personal use.

5 13. On or about June 2, 2007, Respondent wrote a prescription for 100
6 tablets of Norco for alleged patient M. M. under the name and DEA number of Dr. J. N.,
7 without Dr. J. N.'s knowledge or authorization. Respondent issued the prescription using
8 M. M.'s name to obtain the medication for herself (M. M. was not one of Dr. J. N.'s
9 patients, but was a friend of Respondent's husband), and had the prescription filled at
10 CVS Pharmacy located in Palm Desert, California.

11 14. On or about June 1, 2007, Respondent wrote prescriptions for 100 tablets
12 each of Vicodin and Xanax for alleged patient J. N. under the name and DEA number of
13 Dr. J. N., without Dr. J. N.'s knowledge or authorization. Respondent issued the
14 prescriptions using J. N.'s name to obtain the medications for herself (J. N. was not one
15 of Dr. J. N.'s patients, but was Respondent's husband), and had the prescription filled at
16 CVS Pharmacy located in Palm Desert, California.

17 15. On or about June 4, 2007, Respondent wrote a prescription for 100
18 tablets of Norco for alleged patient J. N. under the name and DEA number of Dr. J. N.,
19 without Dr. J. N.'s knowledge or authorization. Respondent issued the prescription using
20 J. N.'s name to obtain the medication for herself, and had the prescription filled at
21 Costco Pharmacy located in La Quinta, California (Respondent obtained 20 Norco tablets
22 from the pharmacy).

23 16. On or about July 9, 2007, Respondent telephoned in a prescription for
24 100 tablets of Norco for alleged patient R. W. (R. W. was not one of Dr. J. N.'s patients,
25 but was a friend of Respondent's husband, J. N.), to Rite Aid Pharmacy located in Palm
26 Desert, California, without Dr. J. N.'s knowledge or authorization. Respondent later had
27 the prescription filled at the pharmacy for her own personal use.

1 17. On or about August 21, 2007, Respondent telephoned in a prescription for
2 100 tablets of Norco for alleged patient R. W. to Rite Aid Pharmacy located in Palm
3 Desert, California, without Dr. J. N.'s knowledge or authorization. Respondent later had
4 the prescription filled at the pharmacy for her own personal use.

5 18. On or about December 9, 2007, Respondent telephoned in a prescription
6 for 60 tablets of Xanax for alleged patient M. C. to Walgreens Pharmacy located in
7 Tustin, California, without Dr. J. N.'s knowledge or authorization. Respondent later had
8 the prescription filled at the pharmacy for her own personal use.

9 19. On or about February 13, 2008, Respondent telephoned in a prescription
10 for 60 tablets of Xanax for alleged patient M. C. to Walgreens Pharmacy located in
11 Tustin, California, without Dr. J. N.'s knowledge or authorization. Respondent later had
12 the prescription filled at the pharmacy for her own personal use.

13 20. On or about March 1, 2009, Respondent telephoned in a prescription
14 for 60 tablets of Xanax for alleged patient M. C. to Walgreens Pharmacy located in
15 Tustin, California, without Dr. J. N.'s knowledge or authorization. Respondent later had
16 the prescription filled at the pharmacy for her own personal use.

17 **Possession of Controlled Substances:**

18 b. In and between December 2005, and March 2008, Respondent possessed
19 the controlled substances Xanax, Vicodin, Ativan, Didrex, Ambien, Oxycontin, and Norco
20 without valid prescriptions from a physician, dentist, podiatrist, optometrist, veterinarian, or
21 naturopathic doctor, as set forth in subparagraph 22 (a) above, in violation of Code section 4060.

22 **Prescription of Controlled Substances:**

23 c. In and between December 2005, and March 2008, Respondent prescribed
24 the controlled substances Xanax, Vicodin, Ativan, Didrex, Ambien, Oxycontin, and Norco for
25 alleged patients M. C., E. E., M. M., J. N., and R. W. without the knowledge or authorization of
26 Dr. J. N., as set forth in subparagraph 22 (a) above.

27 ///

28 ///

1 **Self-Administration of Controlled Substances:**

2 d. In and between December 2005, and March 2008, Respondent self-
3 administered the controlled substances Xanax, Vicodin, Ativan, Didrex, Ambien, Oxycontin, and
4 Norco, without lawful authority therefor.

5 **SECOND CAUSE FOR DISCIPLINE**

6 **(Use of Controlled Substances to an Extent or in a Manner
7 Dangerous or Injurious to Oneself or Others)**

8 23. Respondent is subject to disciplinary action pursuant to Code section
9 2761, subdivision (a), on the grounds of unprofessional conduct, as defined by Code section
10 2762, subdivision (b), in that in and between December 2005, and March 2008, while employed
11 as a pediatric nurse practitioner in the Department of Pediatrics Managed Care Clinic at
12 Harbor-UCLA Medical Center, Torrance, California, and/or licensed as a registered nurse,
13 Respondent used the controlled substances Xanax, Vicodin, Ativan, Didrex, Ambien, Oxycontin,
14 and Norco to an extent or in a manner dangerous or injurious to herself and/or others, as follows:
15 During the time period indicated above, Respondent used Xanax and Ativan for anxiety, Didrex
16 for dieting, and Ambien for sleeping. Respondent also used Norco, Xanax, and Oxycontin for
17 pain following her surgery of July 2006. Respondent took three to five pills a day and developed
18 a substance abuse problem. Respondent's "drugs of choice" were Vicodin, Xanax, and Norco.

19 **PRAYER**

20 WHEREFORE, Complainant requests that a hearing be held on the matters herein
21 alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

22 1. Revoking or suspending Registered Nurse License Number 442878, issued
23 to Amy Nichols, also known as Amy H. Banuelos, Amy Herminia Banuelos, Herminia Banuelos
24 Acosta, and Herminia Banuelos;

25 2. Revoking or suspending Public Health Nurse Certificate Number
26 PHN 52663, issued to Amy Nichols, also known as Amy H. Banuelos, Amy Herminia Banuelos,
27 Herminia Banuelos Acosta, and Herminia Banuelos;

28 ///

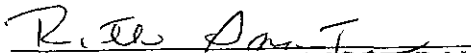
1 3. Revoking or suspending Nurse Practitioner Certificate Number NP 8546,
2 issued to Amy Nichols, also known as Amy H. Banuelos, Amy Herminia Banuelos, Herminia
3 Banuelos Acosta, and Herminia Banuelos;

4 4. Revoking or suspending Nurse Practitioner Furnishing Certificate Number
5 NPF 8546, issued to Amy Nichols, also known as Amy H. Banuelos, Amy Herminia Banuelos,
6 Herminia Banuelos Acosta, and Herminia Banuelos;

7 5. Ordering Amy Nichols, also known as Amy H. Banuelos, Amy Herminia
8 Banuelos, Herminia Banuelos Acosta, and Herminia Banuelos, to pay the Board of Registered
9 Nursing the reasonable costs of the investigation and enforcement of this case, pursuant to
10 Business and Professions Code section 125.3;

11 6. Taking such other and further action as deemed necessary and proper.
12

13 DATED: 4/22/09.

14 
15 RUTH ANN TERRY, M.P.H., R.N.
16 Executive Officer
17 Board of Registered Nursing
18 Department of Consumer Affairs
19 State of California

20
21
22
23
24
25
26
27
28
Complainant